HR -88-008 -AK
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STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS

FOR THE DEPARTMENT OF HUMAN RIGHTS

State of Minnesota, by Stephen W. Cooper, Commissioner, Department of Human Rights,

Complainant,

V.

Cleveland Gear Company,

Respondent.

ORDER DENYING SUMMARY JUDGMENT

On January 21, 1988, Respondent filed a Motion for Summary Judgment in this proceeding. On February 5, 1988, the Department filed Memorandum in opposition to the Motion.

On February 10, 1988, a hearing was held on the Motion. Appearing on behalf of the Complainant, Department of Human Rights, was Carl M. Warren, Special Assistant Attorney General, 1100 Bremer Tower, Seventh Place and Minnesota Street, St. Paul, Minnesota 55101. Appearing on behalf of the Respondent, Cleveland Gear Company, was Mark B. Rotenberg, Dorsey & Whitney, Attorneys at Law, 2200 First Bank Place East, Minneapolis, Minnesota 55402. Supplemental memoranda were filed, and the record closed on March 21.

Based upon all the filings , the oral argument , and for the reasons set out
in the Memorandum which follows:

IT IS HEREBY ORDERED that the portion of Respondent' s Motion for Summary Judgment that would require collateral estoppel is DENIED.

Dated this 14th day of April, 1988.

ALLAN W. KLEIN
Administrative Law Judge

MEMORANDUM

1.

The primary portion of Respondent's Motion for Summary Judgment turns on the question of whether or not findings from an unemployment compensation

hearing before the Department of Jobs and Training may be used to collaterally estop Complainant from asserting that Respondent unlawfully discriminated against the Complaining Witness on the basis of sex. If estoppel is appropriate, then summary judgment might be appropriate. But without estoppel, there can be no summary judgment because there would be numerous factual issues in dispute. There is a second part of the motion that deals with the doctrine of "comparable worth". That part of the motion is not decided at this time. See Part 11 hereof.

Collateral estoppel, or "issue preclusion", is traditionally applied when a question of fact or law resolved in a prior litigation is raised in a subsequent proceeding based upon a different cause of action. Under the doctrine, the judgment in the prior forum precludes a relitigation of the issues necessary to the outcome of the first action. Issue preclusion minimizes inconsistent determinations of factual issues among different forums, and promotes judicial economy. The doctrine is customarily considered in terms of fundamental notions of justice and fairness. See_generally, "Getting a Full Bite of the Apple: When Should the Doctrine of Issue Preclusion Make an Administrative or Arbitral Determination Binding in a Court of Law?", LV Fordam Law Review, 63 (1986).

In the case of Ellis v. Minneapolis Commission on Civil Rights, 319 N.W.2d 702 (Minn. 1982), the Minnesota Supreme Court set forth four tests to determine when collateral estoppel is appropriate. They are:

(1) The issue was identical to one in a prior acjudication;

(2) There was a final judgment on the merits;

(3) The estopped party was a party or in privity with a party to the prior adjudication; and,

(4) The estopped party was given a full and fair opportunity to be heard on the adjudicated issue.

The crucial tests in this particular case are numbers (1) and (4). There is no serious disagreement about tests (2) and (3) -- they are both met. A brief recitation of the facts will be set forth below in order to evaluate whether tests (1) and (4) have been met.

Cora Williams, the Complaining Witness in this matter, was employed by Respondent Cleveland Gear Company from August of 1975 to Parch of 1985. She originally was a secretary to the president, then became a "personnel technician", and then a "personnel administrator". For much of the time at issue, the personnel department consisted of two people -- the personnel manager and Williams. In 1984, the personnel manager was terminated, and the Complaining Witness assumed the responsibilities of the department. She served alone in the department for a few months, until she was given a half-time assistant for clerical work. Throughout the period of time that she

worked for Respondent, including the time that she was the only person in the department, she was paid substantially less than the former personnel manager was paid. However, there were substantial differences in background, education, and experience.

On February 26, 1985, Williams filed an intake questionnaire with the Department of Human Rights, alleging that Respondent was paying her in a

discriminatory Manner because of sex. On February 28, 1985, she gave Respondent notice of her intention to quit her job. Her last day Of work was March 13, 1985.

On March 10, 1985, she filed a claim with the Minnesota Department of Jobs and Training for unemployment benefits. She stated that although her termination was voluntary, it was for good Cause attributable to the Employer because of the sex discrimination in pay. Respondent opposed William's Claim, and on or about March 27, 1985, it was denied . on or about March 30, 1985, Williams appealed the denial.

The appeal was heard before a Referee on April 25 and May 31, 1985. Williams appeared pro I in that proceeding, while the Respondent was represented by an attorney. Williams testified, as did two witnesses for Cleveland Gear. On July 11, 1985, the Referee issued a six-page decision, concluding that Williams voluntarily discontinued employment without good cause attributable to the Employer. It is evident from the Referee's decision that Williams alleged that Cleveland WaS unfair in its treatment of her because of her sex. The Referee noted the following:

> . . . The Claimant is quite possibly correct that in management's dealings with her, there was a strong element of sexism at work. An unemployment insurance hearing is a forum for the resolution of sex discrimination issues only to the extent that any sex discrimination constitutes good Cause attributable to the employer for quitting. The issues are not congruent. Here the referee concludes that where the claimant received an actual increase in pay for virtually the same number of hours worked she did not have good cause to quit even if she suffered some discrimination. The claimant may wish to pursue her remedy in another forum.

Williams appealed the Referee's decision to the Commissioner's representative. On November 1, 1985, the representative affirmed the Referee's decision. In doing so, however, review proceedings were conducted on October 15, 1985, wherein Williams appeared both in person and by an attorney. Cleveland was again represented by an attorney. In his decision on the appeal, the Commissioner's representative noted that material sex

discrimination would constitute good cause attributable to the employer in the event of a voluntary quit, but that the burden of proof was on the Claimant to show that the disparity in pay was based on sex, and that she had not made an adequate showing. The Referee noted that Williams had argued that "the company must prove that the difference in sex provided no part for the basis for the wage differential" between her and the old personnel manager. The Commissioner's representative disagreed with that statement, stating that "The burden stays with the claimant." Decision on Appeal to the Commissioner, November 1, 1985, p. 5.

On or about December 27, 1985, the Department of Human Rights found probable cause to believe that Cleveland Gear had discriminated against Williams. On or about October 15, 1987, following unsuccessful attempts to conciliate the matter, a Complaint was issued. On or about January 20, 1988, Respondent served its Motion for Summary Judgment, alleging that the decision of the Commissioner's representative in the unemployment compensation proceeding is res judicata and bars Complainant from proceeding under the Human Rights Act.

Using the four Ellis tests, there are two questions which require analysis. The first is whethe or not the determination that the voluntary quit was not for good cause attributable to the Employer was identical to the issue to be decided in the discrimination case, The second is whether or not Williams was given a "full and fair opportunity" to be heard on the issue.

The Ellis case provides some guidance on the first question. In that case, a landlord filed an unlawful detainer complaint against his tenants, who refused to vacate the premises or execute a rental agreement. There was a four-day jury trial. One of the instructions to the jury, given at the tenants' request, was as follows:

> It would be a prohibited discrimination under the Minnesota Human Rights Act and the Civil Rights Ordinance of the City of Minneapolis if the landlords' attempt to terminate the tenancy . . . was motivated by the fact that the tenant was a Native American. Then you should find for the defendants.

The jury returned a verdict in favor of the landlord. The tenants filed a charge of racial discrimination with the Minneapolis Commission on Civil Rights, alleging that the landlord had discriminated in the rental of real property. A hearing was held before a three member panel of the Commission, which found that the landlord had discriminated against the tenant. The Commission's findings were affirmed by the District Court, and the landlord appealed to the Supreme Court, arguing that the Minneapolis Commission was collaterally estopped from relitigating the issue of discriminatory eviction because of the adverse jury verdict in the unlawful detainer action. The Supreme Court agreed with the landlord, and reversed the District Court. With particular regard to the first of the four tests, the Court noted:

> The issue in the unlawful detainer action -- as raised by the defense of discriminatory eviction and reflected in the jury instruction on the same -- is identical with the issue raised by the alleged violations of the Civil Rights Ordinance.

In the Williams case, although the factual issue in the unemployment case is the same as the factual issue in the discrimination case, the manner in which the evidence is presented and analyzed is dramatically different. The same evidence could well result in a different outcome given the two different

methods. Minnesota has adopted the analytical framework of McDonnell Douglas v. Green, 411 U.S. 792 (1973). See, for example, Danz v._Jones, 263 N.W.2d 395 (Minn. 1978). In Anderson v. Hunter,_Keith Marshall & Co., 417 N.W.2d 619 (Minn. 1988), the Minnesota Supreme Court noted that it had already adopted the McDonnell Douglas analysis as an aid to resolving "single-motive" discrimination cases, and it held, in the Anderson case, that the same analysis must be applied to "mixed-motive" cases as well. The Court in Anderson then went on to offer a detailed description of how the analysis should be applied. That analysis was not applied in Williams' unemployment compensation case. That may be the reason why the Referee suggested Williams might want to pursue her discrimination claim "in another forum."

While there might be adjudicative facts which would not vary depending upon the analysis used, the fact at issue here (whether or not sex played a role in Williams' pay) is definitely the kind of fact whose determination might well be affected by the method of analysis.

The reasoning set forth above is tied into the fourth Ellis test as well. That test provides that collateral estoppel is appropriate where the estopped party was given a "full and fair opportunity" to be heard on the adjudicated issue. Again, the starting point on that issue is Ellis itself. In that case, a four-day jury trial had resulted in a verdict in favor of the landlord. The jury was given a special instruction relating to racial discrimination. The jury found for the landlord. The tenants started a separate action before the Minneapolis Commission on Civil Rights. The Commission found discrimination. The landlord appealed. The thrust of the tenant's argument was the idea that the unlawful detainer action involved only limited issues presented in a summary Manner, thereby preventing him from having a full and fair opportunity to adjudicate the issue of racial discrimination. The Supreme Court rejected the claim with the following analysis (emphasis added):

> This particular unlawful detainer proceeding was not summary in nature, however. Both parties were represented by counsel. Respondent..... had significantly more time to prepare a response than is typical in an unlawful detainer action. The matter was tried to a jury over a four-day period. Respondent . . . was allowed to introduce extensive testimony regarding his defense of discriminatory eviction. Although his right to discovery was admittedly limited . . .
>
> Respondent has failed to indicate how this limitation encumbered his ability to present fully his position. In this unique_ fact situation, Respondent..... has had a full and fair opportunity to litigate the discriminatory eviction issue in the unlawful detainer action.

What the Ellis court is saying is that it is appropriate to look at the facts of each case to decide if a full and fair opportunity has been granted.

In the instant case, Williams appeared at the unemployment compensation hearing pro se. She was the only witness on her behalf - she called no others. Her last day of work was March 13, 1985, and the first hearing date was April 25, 1985. A second hearing was held on May 31, 1985. While it certainly would not be impossible to engage in meaningful discovery during that time if Respondent were cooperative, there is no indication that there

was any discovery in that case, or that Williams was even aware of its purposes and procedures. Moreover, there was no participation of governmental agencies which have expertise in the area of proving discrimination.

While there may be cases where an unemployment decision could be used to estop a later human rights action [see, for example, Roberson v. First Bank Systems, Inc., No. 85-2315, Hennepin County District Court, December 17, 1987 and Gear v. Citv of Des Moines, 514 F. Supp. 1218 (S.D. la. 1981)], they ought to be the exception rather than the rule. The unemployment compensation statute and process are designed to provide quick decisions on limited questions. The workloads of the referees and representatives are established with this in mind. The rules of procedure and burdens are equally focused. Participants are not warned of the possible consequences of a given outcome, such aS collateral estoppel. There are strong public policy reasons that militate against the wholesale use of these decisions for other litigation. See, dissent of Justice Blackmar in Bresnahan v. May Dept. Stores, 726 S.W.2d 327 (Mo. 1987). While a particular case may present a situation where

estoppel is appropriate (such as Ellis), that exceptional case does not create
a blanket rule, or even a presumption.

When weighed against the Ellis critera, the Williams Ease does not present
an adequate bassis for allowing the use of collateral estoppel. Without collateral estoppel, there is no basis for summary judgment. Therefore, Cleveland's motion must be denied.

The parties also disagree as to whether Minnesota law allows a claim of discrimination to be based upon a theory of "comparable worth" -- that if a person of one sex in one position is paid less than a person of another sex in
a different position, but the two positions are "comparable", then a discrimination claim would lie.

The Administrative Law Judge has not addressed that question because it would involve a substantial amount of time and the resolution of the primary qeustion may resolve the entire case. In the interests of economy, therefore,
that issue is explicitly not decided at this time. If the case cannot be resolved without a hearing, and if either party desires to resolve this issue prior to hearing, then another motion may be brought.

A.W.K.